ANTHONY T. ASH

IBLA 80-828 Decided January 30, 1981

Appeal from the decision of the Arizona State Office, Bureau of Land Management, rejecting color-of-title application A-13977.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title: Applications

   A class 1 color-of-title claim requires good faith, peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors. When the applicant fails to produce such a document, the application must be rejected.

2. Color or Claim of Title: Applications--Color or Claim of Title: Description of Land

   An instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained. A color-of-title application is properly rejected where the claimed land is not described in deeds produced to support an applicant's claim.

APPEARANCES: Fred J. Ash, Esq., Ash, Reeb, and Addington, Mesa, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Anthony T. Ash has appealed the decision of the Arizona State Office, Bureau of Land Management (BLM), dated July 2, 1980, rejecting his application A-13977 claiming lands under the Color of Title Act of December 22, 1928, as amended, 43 U.S.C. §§ 1068-1068b (1976). On June 6, 1980, appellant filed a class 1 color-of-title application for a 2.7-acre portion of the W 1/2 W 1/2 SE 1/4, sec. 13, T. 6 S., R. 17 E., Gila and Salt River meridian, Arizona. The land was also described as lying northwesterly of the Aravaipa Creek and included under the fence transversing along the west side of the creek.

The State Office rejected the application because appellant failed to establish a claim or color of title to the identified lands based on a deed or other conveyancing document from a source other than the United States purporting to convey title to the lands.

Appellant submitted as part of his application a list of conveyances pertaining to the claimed land which indicates that the original grantor of lands adjoining the claimed land and now owned by him was the United States and the grantees were the heirs or devisees of Archie H. Vail. The Vail patent, No. 44581, was issued February 1, 1909, for lands southwest of the land claimed in appellant's application and described as the SE 1/4 SW 1/4 sec. 13, and N 1/2 NW 1/4 sec. 24, T. 6 S., R. 17 E., Gila and Salt River meridian. On September 13, 1948, lands north of the Vail lands and west of the claimed lands in sec. 13 were patented to A. H. Wagner, patent No. 1123911, pursuant to a Taylor Grazing Act exchange. This patent covered the SE 1/4 NW 1/4, NE 1/4 SW 1/4 and SW 1/4 SW 1/4, sec. 13. Wagner had acquired the Vail lands in 1940 and appellant apparently acquired all of the lands from Joseph and Gussie Flieger on May 21, 1973, after various intermediate conveyances. 1/ Appellant contends that the claimed 2.7 acres had long been considered as part of the property purchased from the Fliegers even though neither of the two patents had included that land and therefore title remained in the United States. Appellant argues that the claimed lands were a part of the original homestead's access to the Aravaipa Creek for irrigation water and homestead uses. He indicates that the claimed lands along with the patented lands have been used for farming as long as anyone in the area can remember and at least before 1909. The claimed lands have been irrigated, cultivated and contain such improvements as a well, pumps, electrical panels, storage tanks and pipeline for irrigation, and a water supply for cattle. The headgates and conduits from Aravaipa Creek to the ranch owned by appellant are also located within the 2.7 acres. Appellant's application indicates that he learned he did not have clear title to this land in 1976.

1/ Appellant's statement of reasons indicates that the claimed acreage is "located within the boundary fences of a ranch which he purchased from JO and GUSSIE FLIEGER under agreement of November 12, 1961." The discrepancy between this date and that on the conveyances list is unexplained.

In his statement of reasons appellant argues that various conveyances in his chain of title specifically refer to the claimed lands as being part of the original homestead granted to Vail, but he has not submitted any documentation of this to the Board. He quotes from a deed which conveyed land from Rosa Buzan to Wagner, dated May 8, 1940, and argues that it refers to the claimed 2.7 acres as follows:

> [T]ogether with all possessory rights of every kind and character now owned, held, or enjoyed by the grantor in connection with the premises hereby conveyed; and together with all water, water rights, water appropriations, ditch and ditch rights, tanks, reservoirs and pipelines now owned, held, or enjoyed by the said grantor in connection with or as appurtenances to the above described property.

Appellant urges that this provision is sufficient to meet the requirement that his claim to the land be derived from a source other than the United States purporting to convey title to the lands. He states that he and his predecessors to the land have held the land in good faith, and in peaceful adverse possession for more than 20 years under color or claim of title and placed valuable improvements on the land as required. Appellant requests that if there is any question as to his rights under the listed conveyances, he be granted a hearing to present extrinsic evidence to make definite any latent ambiguity in the deeds.

[1] The Color of Title Act supra, directs the Secretary of the Interior to issue a patent for up to 160 acres of land to a person who has in good faith peacefully and adversely possessed public lands for more than 20 years under color or claim of title and has placed valuable improvements on the land or cultivated some part of the land. 43 U.S.C. § 1068 (1976). An applicant must base his claim or color of title upon a document from a source other than the United States, which on its face purports to convey the land applied for to the applicant or his predecessors. Marie Lombardo, 37 IBLA 247 (1978); Mable M. Farlow, 30 IBLA 320 (1977) aff'd on reconsideration, 39 IBLA 15 (1979); Cloyd and Velma Mitchell, 22 IBLA 299 (1975).

[2] The instrument of conveyance upon which an applicant relies is sufficient to provide color of title only if it describes the land conveyed with such certainty that the boundaries and identity of the land may be ascertained. Mary C. Pemberton, 38 IBLA 118 (1978). See Elsie V. Farrington, 9 IBLA 191, 194-96 (1973), appeal dismissed with prejudice, Civ. No. S 2768 (E.D. Cal. December 5, 1973). Where the description offered contains a latent ambiguity, extrinsic evidence may be introduced to make definite the description. See Mable M. Farlow, supra. 2/

2/ In Farlow, the chain of title contained deeds referencing "Lot 5," the land for which the color-of-title application had been submitted. The question developed whether Lot 5 was only on one side of a certain river as shown on the original United States plat of survey or whether the reference to "Lot 5" in the deed was based on the plats,

In this case, appellant has made no showing as to an instrument of conveyance containing a legally sufficient description of the 2.7 acres of land claimed. The language in the Buzan deed quoted by appelant does not suffice. The provision quoted is not a description of land but rather a listing of rights and improvements appurtenant to "the premises hereby conveyed." Although appellant did not submit a copy of the deed quoted from to the Board, we take the reference to "above described property" to mean that some sort of legal description of the property conveyed by the Buzan deed appears on the face of the deed and we presume that is the description had included the claimed land, appellant, in appealing, would not rely on the argument that references to appurtenant rights and improvements were intended to expand the conveyance to cover the claimed lands in addition to those specifically described. This language does not represent a latent ambiguity in a description of the claimed land; rather, appellant is attempting to find the needed description of the land where none exists. Thus, there is no basis for ordering a hearing in this case and appellant's request for one is denied. Since appellant has made no showing of an instrument of conveyance containing any description of the claimed land, we must affirm BLM's decision.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bruce R. Harris
Administrative Judge

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fn. 2 (continued)
public records, title company records and opinions indicating that Lot 5 embraced land on both sides of the river. The Board ordered a hearing for the introduction of extrinsic evidence to clear up this latent ambiguity.